



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

July 6, 1993

Mr. Donald S. Glywasky  
Galveston County Legal Department  
4127 Shearn Moody Plaza  
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Galveston, Texas 77550-1454

OR93-426

Dear Mr. Glywasky:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 20527.

The Galveston County Health District (the "health district") has received a request for "the names, addresses and test results of all persons with health problems whose physicians requested testing for the presence of indoor air contaminants, specifically, formaldehyde, by your department for the past 12 months." You have submitted to us for review documents which you think may be responsive to the request. The documents relate to the investigation of specific premises in response to a complaint by a member of the public. You have marked those portions which you claim are excepted from required public disclosure by section 3(a)(1) of the Open Records Act in conjunction with the informer's privilege.

Section 3(a)(1) of the Open Records Act excepts from required public disclosure "information deemed confidential by law, either Constitutional, statutory, or by judicial decision." The informer's privilege has been recognized by Texas courts. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969). In *Roviaro v. United States*, 353 U.S. 53, 59 (1957), the United States Supreme Court explained the rationale that underlies the informer's privilege:

What is usually referred to as the informer's privilege is in reality the Government's privilege to withhold from disclosure the identity of persons who furnish information of violations of law to officers charged with enforcement of that law [citations omitted]. The purpose of the privilege is the furtherance and protection of

the public interest in effective law enforcement. The privilege recognizes the obligation of *citizens* to communicate their knowledge of the commission of crimes to law-enforcement officials and, by preserving their anonymity, encourages them to perform that obligation. (Emphasis added.)

The informer's privilege aspect of section 3(a)(1) protects the identity of persons who report violations of the law. Although the privilege ordinarily applies to the efforts of law enforcement agencies, it can apply to administrative officials with a duty of enforcing particular laws. Attorney General Opinion MW-575 (1982); Open Records Decision Nos. 285, 279 (1981); *see also* Open Records Decision No. 208 (1978). For instance, in Open Records Decision No. 296 (1981) at 2 this office held that the identities of citizens complaining of lead pollution or poisoning were protected by the informer's privilege, as the complaints in that decision constituted Class C misdemeanors. However, when information does not describe conduct that violates the law, the informer's privilege does not apply. Open Records Decision No. 515 (1988); 191 (1978). Moreover, the informer's privilege does not protect communications made by public employees in the scope of their employment. Open Records Decision No. 579 (1990) at 8.

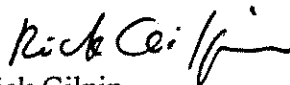
The documents submitted to us for review indicate that a school district employee filed a complaint with the health district alleging problems with the air-conditioning in a classroom in Creekside Intermediate School. The health district, in response to this complaint, conducted a survey of the classroom and school and discovered unacceptable levels of formaldehyde. Nowhere, however, does the information describe conduct that, under ordinary circumstances, would constitute a criminal act. Furthermore, it appears that the school teacher filed the complaint in the scope of his employment. *See generally* Educ. Code § 21.912; 19 T.A.C. § 85.41. Although the facts in this case are similar to those at issue in Open Records Decision No. 296, we nonetheless conclude, that the informer's privilege does not apply in this instance. Accordingly, the documents submitted to us for review must be released in their entirety.<sup>1</sup>

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<sup>1</sup>While you do not expressly make such an assertion, you also suggest that the identity of the complainant is excepted from required public disclosure by section 3(a)(1) in conjunction with privacy doctrine. Information may be withheld on common-law privacy grounds only if it is highly intimate or embarrassing and is of no legitimate concern to the public. *Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The test for constitutional privacy involves a balancing of the individual's privacy interests against the public's need to know information of public concern. *Industrial Foundation*, 540 S.W.2d at 685. The constitutional right of privacy protects information relating to marriage, procreation, contraception, family relationships, and child rearing and education. Open Records Decision No. 447 (1986) at 4. Having examined the information submitted to us for review, we conclude that the identity of the complainant is protected by neither common law nor constitutional privacy.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact this office.

Yours very truly,



Rick Gilpin  
Assistant Attorney General  
Opinion Committee

RG/GCK/jmn

Ref.: ID# 20527

cc: Ms. Betty C. Mullert  
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